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## A CONTRADICTION OF THE RIGHT KIND: CONVENIENCE KILLING AND KANT'S FORMULA OF UNIVERSAL LAW

BY PAULINE KLEINGELD

*One of the most important difficulties facing Kant's Formula of Universal Law (FUL) is its apparent inability to show that it is always impermissible to kill others for the sake of convenience. This difficulty has led current Kantian ethicists to de-emphasize the FUL or at least complement it with other Kantian principles when dealing with murder. The difficulty stems from the fact that the maxim of convenience killing fails to generate a 'contradiction in conception', producing only a 'contradiction in the will' when subjected to the twofold test associated with the FUL. This result is thought to imply that the FUL allows us sometimes to kill for the sake of convenience. In this essay, I argue that the very diagnosis of the problem rests on a mistake, and that if the maxim of convenience killing generates a contradiction in the will, then acting on it is never permissible.*

**Keywords:** categorical imperative, contradiction, Formula of Universal Law, Immanuel Kant, imperfect duties, killing, latitude.

### INTRODUCTION

Kant's Formula of Universal Law (FUL) is widely considered to be incapable of showing that killing others for the sake of one's convenience is absolutely impermissible.<sup>1</sup> Understandably, the FUL's alleged implication that convenience killing is *sometimes* permissible is taken to undercut its standing as a moral principle. Moreover, it seems to be markedly at odds with the main tenets of Kant's moral theory, his own discussions of the prohibition on murder (MM 6:331–6),<sup>2</sup> and the results one seems to get when applying the Formula of Humanity.

<sup>1</sup> See, for example, Allison (2011: 194, 202–3); Glasgow (2003: 45, n.31); Herman (1993: 113–31); Timmons (2017: 96); and Wood (2008: 74).

<sup>2</sup> References to Kant's texts are to *Kant's gesammelte Schriften*, published under the auspices of the Berlin-Brandenburg (formerly Royal Prussian) and Göttingen Academies (Berlin: Walter de Gruyter and predecessors, 1900—). Kant's writings are cited by the abbreviated title, volume, and page numbers. Abbreviations: G = Groundwork for the Metaphysics of Morals, CPrR = Critique of Practical Reason, MM = Metaphysics of Morals. Translations are my own, but I

The charge that the FUL mishandles maxims of ‘murder and mayhem’ (Herman 1993) has had a significant impact on contemporary Kantian ethics. It has contributed to a tendency to de-emphasize the FUL, and even those who defend the formula admit that the problem cannot fully be solved (Korsgaard 1996: 97–101), or at least not without taking recourse to principles extraneous to the FUL itself (Nyholm 2015: 63; Reath 2006: 217, 230n.49; see Section II). It is no exaggeration, therefore, to say that the FUL’s treatment of convenience killing (and other maxims of murder and mayhem) is one of the main problems facing this central principle of Kant’s ethics, if not *the* main problem.

The reason the problem is deemed so serious is that there is no easy fix, because it is tied to a core feature of Kant’s account of the test associated with the FUL, namely the fact that there are two ways in which a maxim can generate a contradiction. The maxim of convenience killing seems to generate the *wrong kind* of contradiction for showing convenience killing to be absolutely impermissible. The maxim does not lead to what is commonly called a ‘contradiction in conception’, but only to a ‘contradiction in the will’. This result is thought to imply that we may *sometimes* kill for the sake of convenience, because contradictions in the will are associated with violations of ‘imperfect’ duties, and imperfect duties permit the agent a certain *latitude*. I call this problem the Latitude Problem.

Other seemingly problematic results of the FUL—discussed in the literature under the heading of ‘false positives and false negatives’—have classic Kantian rebuttals,<sup>3</sup> but the Latitude Problem has seemed insurmountable thus far. As Mark Timmons rightly notes, in his detailed and extensive overview of the scholarly discussion concerning Kant’s FUL, ‘most all contemporary commentators agree’ that acts of murder are not classified as violations of perfect duty and that this is a serious problem (2017: 96). Similarly, at the end of his survey of the debate concerning the Latitude Problem, Henry Allison concludes that this difficulty is the ‘main problem’ for the FUL (or, as he prefers, the Formula of the Law of Nature [FLN]) and ‘sufficient to undermine’ it (2011: 203).

In this essay, I argue that the Latitude Problem is merely apparent because the diagnosis of the problem rests on a mistake. My strategy will not be to argue that the maxim of convenience killing does, after all, lead to a contradiction in conception. Rather, I show that it is a mistake to assume that if the maxim of convenience killing leads only to a contradiction in the will, then it follows that we may sometimes kill for the sake of our convenience. I first discuss in

have benefited from the translations available in the *Cambridge Edition of the Works of Immanuel Kant* (Cambridge: Cambridge University Press, 1992–2016).

<sup>3</sup> See especially O’Neill (1989: 83–104) and Korsgaard (1996: 77–105). For additional and more recent helpful discussions of the issue of ‘false positives’ and ‘false negatives’, see Allison (2011: 190–203); Bojanowski (2017); Cholbi (2016: 151–60); McCarty (2015); Nyholm (2015: 25–69); and Sensen (2014).

more detail how the Latitude Problem is thought to emerge, pointing out that it rests on an alleged parallel with nonbeneficence (Section I) and explaining why two previously proposed solutions leave the basic problem intact (Section II). I then argue that the Latitude Problem stems from the conflation of two types of nonbeneficence, only one of which is morally permissible according to Kant. This makes it possible to show that if the maxim of convenience killing leads to a contradiction in the will when subjected to the test articulated by the FUL, then killing others for the sake of one's convenience is *never* permissible (Section III). In the final section, I address three worries related to this solution (Section IV).

## I. HOW THE LATITUDE PROBLEM IS THOUGHT TO ARISE

In her influential essay titled 'Murder and Mayhem', Barbara Herman diagnoses the Latitude Problem in a way that clearly reveals the argument that underlies it.<sup>4</sup> She develops her argument using the example of the maxim of 'convenience killing', that is, the maxim to 'kill whenever that is necessary to get what I want' (1993: 117).<sup>5</sup> To explain how the problem arises, Herman draws on familiar core tenets of Kant's *Groundwork*: the Categorical Imperative (in particular, the FUL),<sup>6</sup> Kant's claim that maxims can fail the relevant test in two ways, and the associated distinction between perfect and imperfect duties.

The FUL reads as follows: 'Act only in accordance with that maxim through which you can simultaneously will that it become a universal law' (G 4:421, emphasis in original). A maxim is a person's action principle (G 4:421n.; CPrR 5:19), that is, a major premise in an agent's practical reasoning. Based on Kant's discussion of the four famous examples in the *Groundwork*, the FUL is generally interpreted as demanding that each of one's maxims pass a two-stage test. As

<sup>4</sup> An earlier version can be found in Dietrichson (1969).

<sup>5</sup> Fully specified, this maxim would be the following: 'I shall kill others to get what I want whenever that is necessary to get what I want'. One may well doubt whether this is an accurate description of the real maxim (personal action principle, policy) of people who kill for the sake of convenience. Their maxim will usually be more general than this formulation, in that they are not specifically committed to *killing* others for the sake of convenience: they would just as easily injure them, knock them unconscious, or push them out of the way if doing so was necessary, and their set of instruments may further include psychological harm, financial ruin, or social ostracism. Indeed, it may be that their maxim is actually the very general principle of subordinating others' interests to their own. For the purpose of this essay, however, I discuss the maxim as Herman formulates it.

<sup>6</sup> Herman explains the problem as being associated with 'the CI procedure'. This term is not meant to refer to *all formulations* of the Categorical Imperative, however, but only to the criterion articulated in the FUL or FLN. The Formula of Humanity, for example, is not usually thought to fall victim to the problem Herman diagnoses. Therefore, it is potentially confusing to refer to the problem as affecting the Categorical Imperative in general. To avoid such confusion, I focus the discussion on the FUL. Kant introduces the FUL as the main statement of the Categorical Imperative (G 4:421) and presents the FLN as an alternate version of it (G 4:421).

Herman describes the test, one should ask whether a world in which everyone acts on the maxim ‘can be *conceived* without contradiction and, if it can, whether it can also be *willed* (...) without that will contradicting itself’ (1993: 118, emphasis added). If a world in which the maxim is a universal law cannot coherently be conceived, we get what is commonly called a ‘contradiction in conception’; if such a world can be conceived but cannot rationally be willed, we get a ‘contradiction in the will’.

Furthermore, Kant posits a correlation between the two stages in the test and the distinction between perfect and imperfect duties. He matches the first type of contradiction with (violations of) perfect duties: duties that leave the agent *no latitude*. An example is the duty not to make false promises: making false promises is strictly prohibited; it is never morally permissible.

Kant matches the second type of contradiction with (violations of) imperfect duties: duties that allow the agent *latitude* in determining how, when, where, and to what extent he will discharge them. The duty of beneficence, for example, is not a duty to help everyone everywhere who needs any kind of help. Rather, it is a duty to *adopt the maxim* of beneficence, that is, to include the maxim in the set of action principles one uses in one’s practical reasoning. It is left up to the agent to determine more specifically how, when, where, and to what extent he will help others, in light of further considerations, such as his other duties and personal circumstances. Importantly, this entails that it is not always wrong to refrain from acting beneficently, and hence that nonbeneficence is sometimes permissible.

Given the common view of convenience killing as a prime example of absolutely immoral behaviour, Herman argues, we might expect the maxim of convenience killing to lead to a ‘contradiction in conception’, but this is not the result we get. A world in which the maxim of convenience killing was a universal law would be a world with much more violence, but such a world, although unpleasant and less populous, is not inconceivable; indeed, she writes, ‘Hobbes described it in some detail’ (1993: 118). Since such a world can be consistently conceived, she argues, the maxim of convenience killing does not fail the ‘contradiction in conception’ test (1993: 118).

Herman regards it as possible, however, to show that the maxim fails the test in the second stage. She argues that willing a world in which everyone acts on the maxim of convenience killing contradicts something that I must will if I will anything at all—namely, the necessary conditions of my continued agency. Willing a universal ‘Hobbesian condition’ conflicts with willing the necessary conditions of my continued agency, since the latter includes willing that others treat my existence as a limiting condition on their actions (1993: 121). In this way, Herman maintains, the maxim leads to a ‘contradiction in the will’.

Having thus set the stage, Herman then shows how the Latitude Problem arises. She argues that if the maxim of convenience killing fails the test only in the second stage, it is associated with the violation of an imperfect duty. Since

Kant maintains that agents have latitude as to the implementation of their imperfect duties, however, the fact that the maxim fails only the ‘contradiction in the will’ test entails that the agent has a certain *latitude* with regard to convenience killing. In particular, Herman argues, it seems to imply that it is not always impermissible to kill for the sake of convenience.

Herman develops this point by comparing the case of convenience killing to that of nonbeneficence. It seems that if agents have latitude in the case of nonbeneficence, then they must also have latitude in the case of convenience killing. After all, the maxim of convenience killing fails the FUL test in the same way that the maxim of nonbeneficence does. Comparing the failure of the maxim of convenience killing to the failure of the maxim of nonbeneficence, Herman formulates the problem as follows:

The prohibition we would seem to get, following the beneficence example, is a duty not to have a general policy of killing for self-interest. But although we must not have a policy of never helping, we may sometimes not help. Does it follow that, though we must not have a policy of killing, we may sometimes kill? (1993: 123)

Herman does not see any way to avoid this implication and writes that Kant’s theory seems to have the ‘odd’ implication of ‘sorting killing with nonbeneficence’ (1993: 123). Her point here is not that killing is a kind of nonbeneficence. Rather, the ‘sorting’ worry concerns the fact that the argument underlying the prohibition on convenience killing is structurally similar to the argument underlying the impermissibility of nonbeneficence, and hence that convenience killing and nonbeneficence must have the same moral status.

Herman’s explanation of the Latitude Problem can be summarized as follows:

1. Both in the case of the maxim of nonbeneficence and in the case of the maxim of convenience killing, universalizing the maxim yields a contradiction in the will (rather than a contradiction in conception).
2. If the fact that the maxim of nonbeneficence yields a contradiction in the will implies that the agent has latitude, such that nonbeneficence is sometimes morally permissible, then the agent must also have latitude in the case of convenience killing, such that convenience killing is sometimes morally permissible.

Because the Latitude Problem emerges *downstream* of the observation that the maxim leads only to a contradiction in the will, it does not depend on the specific details of Herman’s own construal of this contradiction. For the sake of the argument of this essay, I shall simply assume that the maxim of convenience killing leads to a contradiction in the second stage of the FUL test, without specifying this test in terms of any particular interpretation of the FUL or any specific construal of this contradiction. Herman develops her diagnosis of the Latitude Problem by reference to Onora O’Neill’s interpretation of

what the FUL demands (1993: 115 n.2),<sup>7</sup> but the problem is widely thought also to arise on other interpretations of the formula. For example, Christine Korsgaard acknowledges that the problem emerges for her ‘Practical Contradiction’ interpretation (Korsgaard 1996: 82–5, 97–101; cf. Herman 1993: 188, n.5)<sup>8</sup>; Allen Wood, who defends a deflationary reading of the FUL, agrees with Herman’s diagnosis (Wood 2008: 74); and the Latitude Problem would also seem to emerge on Michael Cholbi’s ‘Rational Contradiction’ interpretation (Cholbi 2016: 74–106) and on my ‘Volitional Self-Contradiction’ interpretation (Kleingeld 2017),<sup>9</sup> again because the contradiction emerges only in the second step of the testing procedure. In short, the Latitude Problem confronts the FUL on a wide variety of interpretations of the criterion it articulates.

## II. TWO CONSTRUCTIVE PROPOSALS AND THE PROBLEM THAT REMAINS

Some authors propose to solve the Latitude Problem by introducing auxiliary assumptions with which a contradiction in conception can be generated for the maxim of convenience killing. Sven Nyholm addresses the problem by introducing elements related to the Formula of Humanity, namely the idea that we ought to ‘preserve’ and ‘promote’ the humanity within each person (G 4:430). He suggests that a world in which the maxim of convenience killing is a universal law ‘is not conducive to the preservation and full realization of the humanity within each person. It is instead in direct conflict with both of these aims. So Herman’s objection fails’ (2015: 63). Nyholm argues that the universalization of the maxim of convenience killing yields a world in which the requirement to preserve humanity is violated, and because Kant associates

<sup>7</sup> O’Neill responds to Herman by saying that the victims of killings cannot will the maxims of their killers and that the maxim of convenience killing therefore cannot be willed by all (O’Neill 1989: 133). Herman could reply, however, that the maxim can be willed by all if it is evaluated independently of knowledge of who will be killed by whom.

<sup>8</sup> Korsgaard offers a partial solution and acknowledges that it does not fully solve the problem (1996: 100). She suggests broadening the conception of the agent’s purpose so as to include staying alive and being secure in the possession of what one wants. It is not immediately clear, however, that secure possession of something is always part of the murderer’s purpose.

<sup>9</sup> The Volitional Self-Contradiction account of the FUL replaces the distinction between ‘contradictions in conception’ and ‘contradictions in the will’ with a distinction between two ways in which self-contradictions in the will can emerge when maxims are subjected to the FUL test. It labels such contradictions ‘volitional self-contradictions’ in part to distinguish them from current understandings of ‘contradictions in the will’. In this essay, I describe the Latitude Problem in terms of the customary distinction between contradictions in conception and contradictions in the will when discussing Herman’s diagnosis and the remedies proposed by others, since these are the terms used in this debate. For the purpose of this essay it does not matter whether one describes the second type of contradiction as a ‘contradiction in the will’ or as a ‘volitional self-contradiction’—what matters is that it is the contradiction that emerges *in the second step* of the test, since this is thought to cause the Latitude Problem.



the failure to preserve humanity with a violation of strict duty, this means that convenience killing is *always* impermissible. Nyholm's strategy clearly shows that Kant's theory as a whole has the resources to reject convenience killing absolutely. Because his strategy is based on elements Kant introduces in contexts other than the FUL, however, it leaves entirely intact the impression that *the FUL on its own* does not.

The same is true of a proposal by Andrews Reath, who suggests that introducing the notion of autonomy may make it possible to generate a contradiction in conception for the maxim of convenience killing. Reath redescribes convenience killing as the 'attempt either to incapacitate or eliminate the agency of another' and argues that the universalization of the maxim, thus understood, 'defeats' the unavoidable 'presupposition of the agent's [own] autonomy' (2006: 217, 230 n.49). This strategy, too, may help to show that Kantian ethics can strictly condemn convenience killing, but because the notion of autonomy is included neither in the original maxim of convenience killing nor in the FUL as stated, it does not dispel the impression that *the FUL on its own* fails to rule out convenience killing as absolutely impermissible,<sup>10</sup> and hence that the Latitude Problem remains a problem for the FUL as such.<sup>11</sup>

The reason why it is important to examine whether *the FUL as such* can handle the Latitude Problem is that Kant repeatedly presents it as the most general and most important formulation of the principle of morality. In the *Groundwork*, he introduces the FUL as 'the' categorical imperative. The other formulas, he writes, are based on 'a certain analogy' (G 4:436, 437). He emphasizes that the other formulas are useful for the purpose of bringing the basic idea 'closer to intuition', but that the 'general formula' of the categorical imperative is to be preferred over the other formulas when it comes to moral evaluation. For the purpose of moral assessment one should follow 'the strict method' and use the 'general formula of the categorical imperative' (G 4:436), Kant states, adding a formulation that is indeed close to the FUL. Furthermore, his formulation of the principle of morality in the *Critique of Practical Reason* resembles the *Groundwork's* FUL (CPrR 5:30), and the same is true of his formulation of 'the' Categorical Imperative in the *Metaphysics of Morals* (MM 6:225, 226, although

<sup>10</sup> It also seems that convenience killing need not involve targeting the *agency* of the person who is killed. The murderer may just want to remove an obstacle that happens to be a human being, for example if the other is in a coma and her body is in the way.

<sup>11</sup> Ted McNair argues that the maxim of convenience killing leads to a contradiction in conception since 'it is possible (indeed likely) that two persons may need to kill another person in order to get what they want, while it would be impossible for them both to act effectively upon this maxim' (2000: 37). This implies, McNair claims, that the maxim cannot be a universal necessary law (2000: 37). McNair's argument crucially depends on his 'Universal Necessity' reading of the FLN, however, and there does not seem to be textual support for the 'necessary law' condition as such. Moreover, it is not impossible for two people to kill a third person; and if one of them does so before the other, the other simply no longer needs to kill the third person in order to get what she or he wants.



in the Doctrine of Virtue Kant also makes use of the Formula of Humanity). In other words, Kant repeatedly highlights the FUL and its close relatives as the most important articulation of the principle of morality.

### III. WHY THE LATITUDE PROBLEM IS MERELY APPARENT

I turn now to showing why it does not follow from Kant's account of the FUL that it is *sometimes* morally permissible to kill for the sake of convenience. The Latitude Problem derives from an overlooked ambiguity in the notion of 'nonbeneficence' that proves to be central to Herman's account of how the problem arises. Due to this ambiguity, latitude in applying a maxim that *passes* the FUL test is mistakenly thought to permit acting on a maxim that *fails* it.

#### III.1. *A simple solution*

Let me start by observing that the wording of the FUL does not seem to permit any leeway at all regarding maxims that fail the test. On the face of it, there seems to be no possibility for the Latitude Problem even to arise, since the maxim of convenience killing simply does not satisfy the criterion articulated in the FUL. The formula requires that you act '*only*'—not: 'usually' or 'for the most part'—in accordance with maxims that you can simultaneously will to become universal laws (G 4:421, quoted above). This implies that if a maxim violates this criterion by yielding a contradiction when submitted to the test, you are *not* permitted to act on the maxim. The wording of the FUL does not permit any latitude with regard to maxims that fail the test and does not contain any qualifications concerning the *kind* of contradiction they yield. This entails that if the maxim of convenience killing leads to a contradiction in the will, it is *never* permissible to act on it. It therefore follows rather straightforwardly from the FUL as stated that acting on the maxim of convenience killing is plainly impermissible. Put differently, the Latitude Problem seems to have a very simple solution. If the maxim of convenience killing leads to a contradiction when subjected to the FUL test, then it is never permissible to act on it—regardless of whether the contradiction emerges in the first or the second stage of the test.

Despite following straightforwardly from the wording of the FUL, this solution may appear to be a bit *too* simple. Kant also states in the *Groundwork* that maxims that cannot be conceived as universal laws involve violations of 'strict or narrow (unremitting) duty', whereas maxims that fail the test in the second stage involve violations 'only of wide (meritorious) duty' (G 4:424). One might take this to indicate that there is some leeway regarding the second category, and that convenience killing would constitute merely a lack of moral merit rather than a violation of an absolute prohibition.

The text suggests otherwise, however. Kant claims, with regard to *both* sets of failing maxims, that acting on such maxims ‘conflicts with duty’ (*der Pflicht widerstreite*, G 4:424). He calls acting on such maxims a ‘violation’ or ‘transgression’ of duty (*Übertretung*, G 4:424, see also MM 6:390, discussed below). He goes on to criticize making exceptions for oneself, referring to maxims that yield a ‘contradiction in our own will’ (G 4:424). Nothing in these statements suggests that it is sometimes permissible to act on maxims that yield a contradiction in the will. Far from allowing the occasional action on a maxim that fails the test in the second stage, they underscore that if a maxim yields a contradiction in the will, it is strictly impermissible to act on it.

### III.2. *The alleged parallel with nonbeneficence*

This prompts the question why exactly the Latitude Problem is thought to emerge in the first place. What part of Kant’s argument is supposed to yield the conclusion that it is sometimes permissible to kill for the sake of convenience, even though the maxim of convenience killing *fails* the criterion articulated in the FUL?

It is worth noting that those who defend this conclusion are not appealing to any explicit statement on Kant’s part to the effect that it is sometimes permissible to act on maxims that fail the test. Rather, it is thought to follow from an alleged *parallel* between how the FUL handles the maxim of convenience killing and how it handles the maxim of nonbeneficence. As we have seen, Herman’s reasoning runs as follows: the maxim of nonbeneficence fails in the second stage of the FUL test, yet it is sometimes permissible to be nonbeneficent. The maxim of convenience killing also fails in the second stage, so it must follow that it is sometimes permissible to kill for the sake of convenience. The Latitude Problem owes its existence entirely to this alleged parallel between convenience killing and nonbeneficence.

The parallel between the cases of nonbeneficence and convenience killing, however, is merely apparent: it depends on an equivocation. The impression that the FUL condones the occasional murder is due to the conflation of two different types of ‘nonbeneficence’, each with a different moral status. In order to show this, I first consider Kant’s account of the moral status of nonbeneficence and then use this analysis to solve (or rather dissolve) the Latitude Problem.

### III.3. *The moral status of nonbeneficence*

In the *Groundwork*, Kant claims that the maxim of nonbeneficence fails the FUL test in the second stage of the procedure, yielding a contradiction in the will (G 4:423). Elsewhere, he argues that we have a duty to adopt the maxim of beneficence instead (G 4:441; CPrR 5:34–5; MM 6:393, 450–4). He

characterizes this duty of beneficence as ‘imperfect’ or ‘wide’, in the sense that we have latitude as to its implementation. This latitude concerns acting on the *maxim of beneficence*.

In the *Metaphysics of Morals*, Kant explicitly notes that this latitude implies that it is sometimes permissible to refrain from acting beneficently, but he adds an important proviso. He explains that nonbeneficence is permissible only if one has adopted the maxim of beneficence and ‘limits’ this maxim by another maxim of duty. Using the latitude regarding beneficence as his example, Kant argues that a wide duty means ‘not the permission to make exceptions to the maxim of the actions, but only the permission to limit one maxim of duty by the other’ (MM 6:390).<sup>12</sup>

Kant goes on to contrast moral merit both with moral deficiency and with vice. He distinguishes the fulfilment of imperfect duty, which he calls ‘merit (*meritum*) = +a’, from two types of ‘transgression’ or ‘violation’ (*Übertretung*, MM 6:390, see also MM 6:224 and 227). The first type of violation is the *failure to adopt* a maxim of promoting a morally obligatory end, for example the failure to adopt the maxim of beneficence. Kant writes that this constitutes a ‘deficiency in moral worth = o’ (MM 6:390). The fact that he assigns a ‘o’ to this moral deficiency should not be misunderstood as meaning that it is morally neutral or permissible. After all, one ought to fulfil one’s duties of virtue and adopt the corresponding maxims. In terms of Kant’s moral accounting analogy, one ought to have a positive score. This is why he labels the lack of moral worth a ‘violation’ of duty in the first place. The second type of violation is the ‘intentional violation’, which constitutes ‘demerit (*demeritum*) = -a’ or *vice* (MM 6:390). Kant writes that vice obtains when it is a subject’s ‘principle [*Grundsatz*] not to comply with such [i.e. imperfect] duties’ (MM 6:390).

Given these distinctions, ‘nonbeneficence’ has three possible meanings, each of which corresponds to a different moral status. It can refer (1) to an agent’s limiting his adopted maxim of beneficence by another maxim of duty; (2) to an agent’s failing to adopt the maxim of beneficence, without the agent adopting the maxim of nonbeneficence; or (3) to an agent’s acting on the maxim of nonbeneficence. Nonbeneficence of the first type is permissible, but nonbeneficence of the second or third type is not. The second constitutes a lack of virtue and the third constitutes vice.

In terms of this taxonomy, then, the only type of nonbeneficence that is morally permissible is the first. Acting on the maxim of nonbeneficence is

<sup>12</sup> In the *Groundwork* Kant defines perfect (strict) duties as duties that allow ‘no exception in favour of inclination’ (G 4:421n.), and readers might be inclined to infer that he holds that imperfect duties do allow for such exceptions. This inference is not warranted, however. Kant is here drawing a contrast between the scholastic understanding of *perfect* duties and his own, so the comment does not regard his understanding of imperfect duties. Moreover, in the *Groundwork* Kant emphatically refuses to commit to the distinction between perfect and imperfect duties, stressing that he uses it merely to organize his examples and postponing proper treatment of the division of duties until the *Metaphysics of Morals* (G 4:421n.).

a form of vice, since an agent who adopts the maxim (action principle) of nonbeneficence clearly makes it his ‘principle not to comply’ with the duty of beneficence—to put it in the terminology of the previous quotation.

But what is meant by one’s maxims of duty ‘limiting’ each other? Well-known examples in the Kantian literature include cases in which maxims of wide duty are limited by maxims of strict duty. For example, the maxim of beneficence is limited by the maxim never to lie: it is morally impermissible to benefit some people by lying to others. Furthermore, maxims of wide duty may limit each other. Consider the example of the wide duty of beneficence and the wide duty to develop your talents. Sometimes you can fulfil both duties at the same time, developing your talents by helping others, as in the case of a medical student working as a volunteer in a disaster relief program. In other situations, you will have to choose, and in such cases acting on the maxim of beneficence limits your acting on the maxim of developing your talents, or vice versa. This should not be misunderstood as your renouncing the one maxim in favour of the other. Rather, you remain committed to both principles but limit the one by the other. For example, you may put the development of your talents temporarily on hold for the sake of helping someone in need, or, conversely, you may temporarily put your beneficent activities on hold while you are studying for exams. Kant illustrates this point by saying that one’s parental duties may limit one’s general beneficence (MM 6:390).

In all of this, there is latitude *only* with regard to *maxims of duty*. Nonbeneficence is *permissible* only in cases where the agent has adopted the maxim of beneficence but limits this maxim of duty by another maxim of duty. Nonbeneficence is *impermissible*, however, when the agent fails to adopt the maxim of beneficence (lack of virtue) or acts on the maxim of nonbeneficence (vice), that is, on the principle of never helping others. In other words, there certainly is latitude regarding the fulfilment of the duty of beneficence, but this does not include permission to act on maxims that fail the test articulated in the FUL. Nowhere does Kant state that it is sometimes permissible to act on the maxim of nonbeneficence.

### III.4. *How the Latitude Problem disappears*

In the context of the discussion of the Latitude Problem, only two of the three types of nonbeneficence are in play. Given the way in which Herman develops her argument, her focus is not on nonbeneficence in the sense of a mere failure to adopt the maxim of beneficence. We are not dealing with a mere lack of virtue, since what is at issue is the occasional action on a maxim that is assumed to yield a contradiction in the will: action on the maxim of convenience killing. I therefore set aside nonbeneficence in the sense of a lack of virtue. I concentrate on the remaining two senses of ‘nonbeneficence’, which I term ‘principled nonbeneficence’ and ‘principled-beneficence-on-standby’.

Principled nonbeneficence involves acting on the maxim of nonbeneficence, whereas principled-beneficence-on-standby involves not acting on one's adopted maxim of beneficence, for the sake of some other duty.

To illustrate the difference between these two types of nonbeneficence, let me compare a Kantian agent and her vicious twin. Consider Immanuela, who realizes that acting on the maxim of nonbeneficence is morally impermissible and who instead has adopted, from duty, the maxim of beneficence. During a particular week, she does not act on her maxim of beneficence, because she is studying for her medical exams, in a remote location cut off from the outside world. She is instead acting on her maxim of developing her socially useful talents (cf. G 4:422), a maxim she has also adopted from duty. For that whole week, she helps no one, but she certainly is not acting on the maxim of nonbeneficence. Nothing in the set-up of this example implies that she is acting on the basis of a principle of never helping anyone. She knows this maxim to be impermissible, and she has not adopted it. Rather, she has adopted the maxim of beneficence, but this maxim is currently 'limited' by her maxim of developing her socially useful talents. She is still firmly committed to helping others in need. If, during this week, she were to encounter an injured hiker who had lost her way in the woods, she would offer assistance.

Now compare Immanuela to her vicious brother Vic who has adopted the maxim of nonbeneficence and the maxim of convenience killing: he is firmly committed to putting his own interests first. He, too, is studying for his medical exams, being attracted to the study of medicine merely by the prospect of a high income. If an injured hiker knocked on his door, Vic would ignore her, and if the knocking started bothering him, he would kill her to stop the noise. While they are studying for their exams neither Immanuela nor her brother are engaging in beneficent activities, but the nature and moral status of their 'nonbeneficence' is very different on account of the differences in content and moral status of their maxims. Immanuela has adopted the maxim of beneficence, but her beneficence is temporarily on standby. Vic has adopted the maxim of nonbeneficence; he is nonbeneficent as a matter of principle.

Once we keep these two types of nonbeneficence distinct, the Latitude Problem completely disappears. Recall that Herman's argument has two steps. She first claims that the maxim of convenience killing fails the FUL test in the same way as the maxim of nonbeneficence, since in both cases universalizing the maxim yields a contradiction in the will; next, she claims that if it is sometimes permissible to be nonbeneficent, as Kant says it is, then it must sometimes be permissible to kill for the sake of one's convenience.

We can now see that Herman's argument is invalid because she conflates principled nonbeneficence and principled-beneficence-on-standby. 'Non-beneficence' in the first step of her argument refers to principled nonbeneficence, because this step concerns the maxim of nonbeneficence. 'Nonbeneficence' in the second step refers to principled-beneficence-on-standby, because

this step concerns morally permissible nonbeneficence. From the fact that it is sometimes permissible *not to act on one's maxim of beneficence* it does not follow that it is sometimes permissible *to act on the maxim of nonbeneficence*. As a result, it does not follow that it is sometimes permissible to act on the maxim of convenience killing.

In other words, the fact that both the maxim of nonbeneficence and the maxim of convenience killing fail the FUL test in its second stage (as granted for the purpose of this essay) does not mean that it is permissible sometimes to kill for the sake of convenience. If, as I have argued, Kant claims that acting on the maxim of nonbeneficence is always impermissible, then acting on the maxim of convenience killing must similarly be always impermissible—and the Latitude Problem vanishes. The only permissible form of nonbeneficence is principled-beneficence-on-standby, that is, nonbeneficence on the part of an agent who has adopted the maxim of *beneficence*.

In sum, the fact that there is latitude with regard to principled beneficence does not mean that there is latitude with regard to either principled nonbeneficence or convenience killing (or any other maxim that yields a contradiction in the will). Once the ambiguity in the term 'nonbeneficence' is exposed, it is clear that Kant's assertion that we may sometimes refrain from helping does not commit him to the claim that we may sometimes kill to get what we want.

### III.5. *The 'sorting' worry*

Herman's worry about the 'oddness' of 'sorting killing with nonbeneficence' can now also be put to rest. First, it is not odd but entirely appropriate to 'sort' acting on the maxim of convenience killing with acting on the maxim of nonbeneficence. If both maxims yield a contradiction in the will when subjected to the FUL test, then they have the same moral status: both principled nonbeneficence and convenience killing are absolutely impermissible.

Secondly, acting on the maxim of convenience killing does not get 'sorted' with principled-beneficence-on-standby. The maxim of convenience killing *fails* the FUL test, and hence acting on this maxim is never morally permissible. The maxim of beneficence *passes* the test, and not acting on one's maxim of beneficence is sometimes permissible. Given their very different moral status, convenience killing does not belong in the same moral 'box' as principled-beneficence-on-standby.

## IV. THREE WORRIES

At this stage, one may be concerned that the proposed solution to the Latitude Problem comes at a high cost, or even that the problem returns in different form. First, it might seem that the Latitude Problem could easily be

reintroduced by reformulating Herman's argument in terms of a permissible counterpart to the maxim of convenience killing. Secondly, it might seem that the proposed solution of the Latitude Problem is at odds with Kant's statement that imperfect duties permit latitude, and hence that it merely trades one problem for another. Thirdly, the discussion of these first two concerns might seem to give rise to a new version of the 'sorting' worry. I address these concerns in turn.

#### *IV.1. Permissible counterpart maxims*

First, it might seem that the Latitude Problem can easily be reintroduced via the construction of a morally *permissible* counterpart of the maxim of convenience killing. Acting on the maxim of nonbeneficence is always impermissible, but not acting on the maxim of beneficence is sometimes permissible. One might therefore expect it to be possible to formulate a permissible counterpart to the maxim of convenience killing, on a parallel with the maxim of beneficence, such that not acting on that maxim would be sometimes permissible and allow the occasional murder.

We are now in a position to explain, however, why not acting on a permissible counterpart maxim will never suffice for an action to count as an instance of convenience killing. As we have seen, 'nonbeneficence' is ambiguous between the senses in which beneficence is negated. It admits of three construals, only one of which is morally permissible, namely principled-beneficence-on-standby. 'Convenience killing', by contrast, admits of only one construal: acting on the maxim to kill when this is necessary to get what one wants. Its moral status parallels that of principled nonbeneficence. No matter how we formulate the permissible counterpart to the maxim of convenience killing, therefore, not acting on this maxim, for the sake of another duty, will never constitute killing for the sake of convenience.

To further clarify this last point, let us take the following maxim that can plausibly serve as a permissible counterpart to the maxim of convenience killing: 'I shall further the convenience of others'. Recall that acting on the maxim of beneficence may be 'limited' by strict and wide duties. If we now consider what it would mean to refrain from acting on the maxim to further the convenience of others, for the sake of a strict or wide duty, we can easily see that this does not amount to killing someone for the sake of convenience. This is true even if someone dies as a result of the agent's decision not to act on the maxim: after all, the agent was motivated by duty, not by a concern for her own convenience.

A similar analysis applies to the negatively formulated maxim 'I shall not kill others to get what I want'. Again, not acting on this maxim does not equal or imply killing for the sake of convenience. To see why, assume that Immanuela has adopted this maxim, and that on her way back from her study retreat she



is shipwrecked and spends the rest of her life on an uninhabited island. She knows that she is the only person there, and she now considers this maxim irrelevant to her practical reasoning. Obviously, her not acting on the basis of this maxim does not mean that she is killing anyone for the sake of getting what she wants.

In sum, not acting on permissible counterpart maxims is insufficient for an agent to count as killing for the sake of getting what she wants. To qualify as such, the agent must kill someone and do so in order to get what she wants.<sup>13</sup> Doing *this* involves acting on the maxim of convenience killing.

#### IV.2. *Is there less latitude now?*

The result that convenience killing is always impermissible might seem to solve the Latitude Problem at the cost of creating a significant new difficulty. I have been assuming that the maxim of convenience killing fails the FUL test in the second stage and that it is a violation of imperfect duty (G 4:424). According to Kant, imperfect duties permit latitude. So if acting on the maxim of convenience killing is always impermissible, it might still seem that the result of this paper comes at the price of contradicting Kant's own statement that imperfect duties permit latitude, or at least at the price of restricting this latitude considerably.

This issue was partly addressed above by pointing out that the latitude of imperfect duties concerns only maxims of duty, not impermissible maxims such as the maxim of convenience killing. But the issue deserves further elaboration, and it is instructive to return once again to the case of nonbeneficence.

Let us first ask: Which imperfect duty exactly is violated by acting on the maxim of nonbeneficence? The answer is: the imperfect *duty of beneficence*. This is what Kant says explicitly in the relevant passage in the *Metaphysics of Morals* discussed above (MM 6:390), and this is uncontroversial in the literature. The answer is *not*: the duty not to act on the maxim of nonbeneficence. Nowhere does Kant suggest that the duty not to act on the maxim of nonbeneficence is imperfect. The maxim of nonbeneficence fails the FUL test, and there is no latitude with regard to maxims that fail the test. Acting on the maxim of nonbeneficence is therefore simply prohibited. In fact, as I have also mentioned above, Kant states explicitly that the latitude of the duty of beneficence does not include permission to act on the maxim of nonbeneficence (MM 6:390). The latitude of imperfect duty does not include an incongruous permission to act on maxims that fail the FUL test. Kant's statement that principled

<sup>13</sup> Furthermore, given that this maxim is formulated as a strict negation, any agent who has adopted this maxim but does decide to kill for the sake of convenience would be making an 'exception to the maxim', and this is something Kant explicitly condemns (MM 6:390). By contrast, principled-beneficence-on-standby involves not an exception to the maxim but a limit to the scope of its applicability.

nonbeneficence is never permissible is therefore perfectly compatible with his statement that the agent has latitude in determining how to discharge the duty of beneficence.

If we now analyze the case of convenience killing along parallel lines, this dispels the impression that the absolute impermissibility of convenience killing implies a restriction of the latitude of imperfect duty. Assuming again that the maxim of convenience killing has the same moral status as the maxim of nonbeneficence, we can ask: Which imperfect duty exactly is violated by acting on the maxim of convenience killing? The parallel with nonbeneficence clarifies that the relevant imperfect duty should be understood on a parallel with the *duty of beneficence*. Thus, the answer should be something like this: the imperfect duty to promote the convenience of others. Or perhaps, more generally: the imperfect duty to promote the happiness of others. In any event, the answer to the question is *not*: the (allegedly) imperfect duty not to act on the maxim of convenience killing. The maxim of convenience killing fails the FUL test, and, again, there is no latitude with regard to maxims that fail the test.

The parallel with nonbeneficence makes clear that the absolute impermissibility of convenience killing does not amount to a *restriction* of the latitude of imperfect duty, since Kant does not conceive of this latitude as including permission to act on maxims that fail the FUL test in the first place. Thus, the absolute impermissibility of convenience killing is fully compatible with Kant's statement that imperfect duties come with latitude.

#### IV.3. Does the 'sorting' worry return?

Although the Latitude Problem has been solved, there might be a lingering feeling that the sorting worry has not been dispensed with entirely. Isn't there still a sense in which Kant's position, as here reconstructed, trivializes convenience killing? If killing for the sake of convenience violates the imperfect duty to promote the happiness of others, as suggested in Section IV.2., this might seem to mean that murdering someone is wrong because the action fails to promote the victim's happiness. This might sound 'odd' enough to seem problematic.

This worry betrays a misunderstanding, however, of Kant's notion of imperfect duty. As explained in Section II, an imperfect duty is a duty to adopt a particular maxim, not a duty to perform specific actions (MM 6:388–390). The duty of beneficence is the duty to adopt the maxim of beneficence; the agent has latitude concerning the particular beneficent actions he performs on the basis of this maxim. Given this conception of imperfect duty, the murderer is morally blameworthy not ('merely') on account of failing to perform actions that further his victim's happiness, but rather on account of his heinous maxim, namely the morally prohibited maxim of convenience killing.

## CONCLUSION

Now that the Latitude Problem has disappeared, we are left with the simple solution, that is, with the straightforward account of the absolute impermissibility of convenience killing outlined at the beginning of Section III. The FUL requires that one act *only* on maxims that one can simultaneously will as universal laws. The maxim of convenience killing does not meet this requirement since—as granted for the sake of the argument of this essay—it leads to a contradiction in the will when subjected to the test. Therefore, acting on the maxim of convenience killing is absolutely impermissible, just as acting on the maxim of nonbeneficence is absolutely impermissible.

The argument of this essay extends to other maxims of ‘murder and mayhem’ that fail the FUL test only in its second stage. If a maxim yields a contradiction in the second step, then acting on the maxim is absolutely impermissible. The fact that the contradiction is of the second *kind* does not relax the absolute impermissibility of acting on the maxim at issue. Any latitude for the agent is on the side of the maxims of wide duty, not on the side of maxims that fail the test. In sum, the Latitude Problem is merely apparent, and the FUL’s handling of the maxim of convenience killing does not give Kantian ethicists reason to abandon it or to discount its significance as a moral principle.<sup>14</sup>

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